IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 84 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN & 1 - Appellant(s)

Versus

KANAIYALAL RAMNIVAS AGRAWAL - Defendant(s)

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Appearance :

MR MD PANDYA for Petitioner No(s).: 1,2.

MR YS MANKAD for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 10/08/2005

ORAL JUDGMENT

1. This appeal arises out of a judgment and award rendered by M.A.C.Tribunal (Aux.), Kuchchh at Bhuj in M.A.C.Petition No.81 of 1984 on 22nd March,1988.

2. The claim petition arose out of a vehicular accident that occurred on 2nd October,1983 at about 7.00 a.m. at Gandhidham, involving Scooter No.GJX-1663 and Bus No.GRR-8958. The claimant – respondent herein was riding the Scooter and when he reached the place of accident which is a cross road junction, the Bus dashed against the Scooter, resulting into damage to Scooter and personal injuries to the claimant. He, therefore, preferred a claim of Rs.41,000/-. The Tribunal, after considering rival side evidence, came to a conclusion that claimant was entitled to compensation of Rs.29,100/-. However, the Tribunal was of the view that both, the claimant and the driver of the Bus, equally contributed to the cause of accident and, therefore, held that the claimant was entitled to a compensation of Rs.14,550/- with proportionate cost and interest @ 12% from date of application till realization. Aggrieved by the said judgment and award, the appellants – original opponents have preferred this appeal mainly on the ground that the Tribunal, while discussing the issue of negligence, has come to a specific conclusion that the Scooter which was driven by the claimant was on the wrong side of the road and if it had remained on the correct side, the

unfortunate accident would not have occurred, meaning thereby that the accident occurred out of negligence of scooterist only.

3. Learned Advocate Mr.Pandya appearing for the appellants has taken this Court through the judgment and Record & Proceedings. He submitted that once the Tribunal came to a conclusion that the scooterist was on the wrong side and that if the scooterist had remained on the correct side, the accident would not have occurred, it was not open for the Tribunal to later on observe that the driver of the Bus was also responsible to an extent of 50% towards the cause of accident. Mr.Pandya indicated that the Tribunal has proceeded on a wrong principle of law when it observed that, “it can be presumed always that the driver of the big vehicle can be held always liable because he is driving a big vehicle ...”. Mr.Pandya also submitted that the driver of the Bus is held responsible only on account that he was in-charge of a larger vehicle and owed greater duty of care and caution towards pedestrian, other traffic and the passengers. But, there is no observation by the Tribunal that he failed in his duty and because of that, the accident occurred. Mr.Pandya, therefore, submitted that

the appeal may be allowed.

4. Appeal is opposed to by learned Advocate Mr.Mankad. According to him, the Tribunal's observations on negligence in principle may not be satisfactory or fully correct but, the Tribunal has properly appreciated the evidence on record of the case and has come to a conclusion that both the drivers contributed equally to the cause of accident. These aspects are reflected from evidence itself if the photographs and the panchnama are considered. Mr.Mankad submitted that the accident occurred after the scooterist had almost crossed the intersection when he was hit by the left front portion of the Bus on the left side of the scooter. The impact was so heavy that the scooterist i.e. the claimant was flung, so also the scooter. The accident has resulted into severe injuries to the claimant as can be seen from medical evidence. These factors would reflect the speed at which the Bus was travelling on a junction of roads. He, therefore, submitted that no interference is called for in the findings of the Tribunal. Even looking to the amount involved, the appeal may be dismissed.

5. This Court has taken into consideration rival side

contentions. There cannot be any second opinion on the contention of Mr.Pandya that the Tribunal erred when it observed that it can be presumed always that the driver of the big vehicle can be held always liable because he is driving a big vehicle. No such absolute proposition of law or straight jacket formula can be accepted or confirmed.

5.1 The question of negligence has many factors and many facets to be examined and appreciated. At the same time, in the opinion of this Court, only on basis of these observations, interference with the award may not be called for. The Court has examined the evidence and is of the view that Tribunal has committed no error in appreciating the evidence when it observed that both the drivers were equally responsible, though the Tribunal may not have discussed the same in greater detail. Fact remains undisputed that the accident occurred on intersection. It also appears that the Bus was going from West to East and the scooterist was going from South to North. In the accident, the damage is caused to the scooter on left rear side and to the Bus, on the left front side. These facts are sufficient to infer that scooterist must have crossed major part of the

intersection when the collision took place. As a result of impact, the scooterist has sustained injuries resulting into fracture of ribs, diminishing intra-vertebral space requiring hospitalization etc. The scooter was also damaged considerably. These factors indicate that the Bus was travelling at a considerable speed even on a cross-road junction. It also indicates that the Bus hit the scooter after the scooter had crossed major portion of the junction of the road. The Tribunal has, therefore, properly appreciated the evidence of the case while deciding the question of negligence.

6. The award of compensation of is Rs.14,550/- with proportionate cost and interest @ 12% from date of application till realization to the original claimant, thus is just and proper. In the opinion of this Court, There are no merits in the appeal and no interference is called for. The judgment and award, therefore, stands confirmed. Appeal stands dismissed. No costs.

(A.L.DAVE,J.)

(vipul)